



Order under Section 69 Residential Tenancies Act, 2006

Citation: Skyline Living v Smedley, 2023 ONLTB 31440

Date: 2023-04-19

File Number: LTB-L-048276-22

In the matter of: 308, 955 HURON ST
LONDON ON N5Y4V6

Between: Skyline Living Landlord

And

Ellen Smedley Tenant

Skyline Living (the 'Landlord') applied for an order to terminate the tenancy and evict Ellen Smedley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 2, 2023.

The Landlord's representative Terry Medeiros and the Tenant Ellen Smedley attended the hearing.

Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$844.35. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$27.76. This amount is calculated as follows: \$844.35 x 12, divided by 365 days.
5. The Tenant has paid \$2,575.00 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$3,846.89.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. The Landlord collected a rent deposit of \$814.42 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$3.40 is owing to the Tenant for the period from January 1, 2023 to March 2, 2023.

Relief from eviction

10. The Landlord requested a termination of the tenancy due to the arrears of rent. The Tenant requested that the tenancy be preserved and that she be provided additional time to pay the arrears as she could access the funds to do so by the end of May 2023.
11. The Tenant submitted her spouse suffers from diabetes and has now returned to work after being off for multiple months. In addition, the Tenant will reach out to local resources for additional funds and the Tenant has also began working overtime to be able to catch up on the rental arrears and have them paid in full.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act. I find that this is reasonable as the Tenant has provided a viable way to pay the full arrears of rent by the end of May 2023 and the arrears are substantial as they are almost 5 months of rent. This will provide the Tenant a final opportunity to preserve her tenancy but will minimize the further accrual of the arrears of rent. Prejudice to the Landlord is minimal as the tenancy would be terminated at the end of the May if the order is not voided.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$4,877.24 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$5,721.59 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after May 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before May 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,426.24. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$27.76 per day for the use of the unit starting March 3, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2023, then starting June 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after June 1, 2023.

April 19, 2023

Date Issued

André-Paul Baillargeon-Smith

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on December 1, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2023

Rent Owing To April 30, 2023	\$7,266.24
Application Filing Fee	\$186.00

NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,575.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$4,877.24

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2023

Rent Owing To May 31, 2023	\$8,110.59
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,575.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$5,721.59

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$5,633.06
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,575.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$814.42
Less the amount of the interest on the last month's rent deposit	- \$3.40
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$2,426.24
Plus daily compensation owing for each day of occupation starting March 3, 2023	\$27.76 (per day)

